

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,	)	
	)	
v.	)	ID#: 0608025757
	)	
LEROY COOK, SR.,	)	
Defendant.	)	

**ORDER**

**Upon Defendant's Motion for Disqualification –  
DENIED**

**Upon Defendant's Fourth Motion for Postconviction Relief –  
SUMMARILY DISMISSED**

1. Instead of going to trial on January 8, 2008, Defendant pleaded guilty to Rape in the second degree, for which he received a long prison sentence. Defendant did not file a direct appeal. Defendant filed three motions for postconviction relief. This is his fourth.

2. All along, Defendant has ignored the fact that his victim was his 15 year old sister-in-law and the State was prepared to use her child's DNA to prove he had sex with her. Considering the victim's age and Defendant's relation to her, that amounted to Rape in the first degree,<sup>1</sup> for which the minimum sentence is 15

---

<sup>1</sup> 11 Del. C. § 773(a)(5).

years.<sup>2</sup> By offering the plea, the State dropped the charges alleging Defendant had been having sex with the child over the years since she was 10 years old.

3. In his serial motions for postconviction relief, Defendant has alleged defects in the indictment and ineffective assistance of counsel. (Before he pleaded guilty, Defendant had two attorneys, expressing dissatisfaction with each, at times.) All of this has been discussed in earlier decisions.<sup>3</sup>

4. Now, Defendant has turned on the court. Along with his fourth motion for postconviction relief, Defendant has moved to disqualify the undersigned judge, who accepted Defendant's plea and sentenced him. Three years after his plea was accepted, Defendant has parsed the March 14, 2008 sentencing. He offers two snippets that he claims demonstrate "bias and prejudice toward this case by [the judge's] pre-determined notions." Actually, Defendant is focusing on the court's continuing belief that the plea was in Defendant's best interest.

5. As stated above, Defendant pled guilty to Rape in the second degree. Pursuant to Defendant's Truth-in-Sentencing guilty plea form, Defendant had to serve a minimum ten-year sentence, and the court could have imposed a full

---

<sup>2</sup> 11 Del. C. § 4205(b)(1).

<sup>3</sup> See *State v. Cook*, Cr. ID No. 0608025757, at \*2 (Del. Super May 20, 2009) (Silverman, J.) ("Defendant's relationship with [his attorney] became so hostile and dysfunctional that the court had no choice but to relieve [him]."), *aff'd*, 991 A.2d 17 (Del. 2010) (TABLE); see also *State v. Cook*, 2011 WL 2163584 (Del. Super. Jan. 28, 2011) (Silverman, J.), *aff'd*, 15 A.3d 216 (Del. 2011) (TABLE).

25 year prison term. Expressly refusing to impose the minimum where Defendant was the 15 year old victim's 23 year old brother-in-law and he was "habitual eligible,"<sup>4</sup> the court suspended Defendant's 25 year prison term at Level 5 after 12 years. That was two years more than the minimum and the State's recommendation, but 13 years less than the maximum.

6. Any knowledge the court has about this case has come entirely from the record. The court has no special interest in Defendant or his case. In summary, the court imposed a 12 year prison sentence instead of the minimum 10 years and it denied Defendant's postconviction motions. That does not reflect improper bias. All of this was explained at sentencing directly or indirectly in the prior decisions.

7. As for Defendant's fourth motion for postconviction relief, like his second and third motions were, it is procedurally barred and review is not warranted in the interest of justice.<sup>5</sup>

8. Finally, the court observes that the specific relief Defendant requests is not available through a motion for postconviction relief, or otherwise. He asks the court to allow him to "plea anew to the violation of 11 Del. C. Sec. 770."

---

<sup>4</sup> 11 *Del. C.* § 4214.

<sup>5</sup> Super. Ct. Crim. R. 61(i)(4).

That section sets-out Rape in the fourth degree. The court simply does not have authority to force the State to offer a particular plea bargain. Here, the Attorney General was unwilling to offer a plea agreement involving Rape in the fourth degree.

9. If the court were to allow Defendant to withdraw his guilty plea, he would have to stand trial for the far more serious felonies for which he was indicted. And, as the court keeps reminding Defendant and Defendant keeps ignoring, his child victim gave birth to his baby. By pleading guilty, he avoided almost certain conviction at trial, followed by a mandatory sentence that would almost guarantee his dying in prison.<sup>6</sup>

For the foregoing reasons, Defendant's Motion to Disqualify is **DENIED**. Defendant's Fourth Motion for Postconviction Relief is **SUMMARILY DISMISSED**. The Prothonotary shall notify the Defendant.

**IT IS SO ORDERED.**

Date: February 24, 2012

/s/ Fred S. Silverman

Judge

cc: Prothonotary (Criminal Division)  
Renee L. Hrivnak, Deputy Attorney General  
Leroy Cook, Sr., Defendant

---

<sup>6</sup> See *State v. Cook*, Cr. ID No. 0608025757, at \*6 ("By pleading guilty . . . , Defendant avoided multiple convictions and punishment . . . tantamount to a life sentence.").